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COMPARATIVE LEGAL PHILOSOPHY APPLIED TO LEGAL INSTITUTIONS (Vol. III, Modern Legal Philosophy Series). By LUIGI MIRAGLIA, Professor of the Philosophy of Law in the University of Naples. Translated by John Lisle of the Philadelphia Bar. With an Introduction by Albert Kocourek, Lecturer on Jurisprudence in Northwestern University. Boston: THE BOSTON BOOK COMPANY. 1912. pp. xl, 793.

This work was selected for translation by the Editorial Committee of the Association of American Law Schools, as Mr. Kocourek, a member of the Committee, tells us in his introduction (pp. xi-xxvii), partly because it seemed desirable that Italian as well as German and French theories should be presented and partly because Miraglia is eclectic in his philosophy. He is disposed to view theories apparently antagonistic as expressing equally legitimate points of view.

The volume, which is divided into two books, consists of three fairly distinct parts. The first 177 pages, which constitute more than half of Book I, are devoted to the philosophy of law as connected with different systems of general philosophy. Since an intelligent reading of this material presupposes some acquaintance with the history of philosophy in general, an introduction of 86 pages outlines this history, beginning with the Greeks and coming down to modern times. In this introduction the material is so condensed as to be largely unintelligible to a reader not already familiar with this branch of learning. To one so initiated, however, the introduction will be of value, not only as a review, but also because the legal-philosophical implications of the various systems are at least indicated. In the following five chapters (pp. 87-177) the principal systems of legal philosophy are discussed, not in their historical sequence, but in a somewhat systematic arrangement. In this part of the work there is little mention, even by way of illustration, of concrete phenomena of positive law. Much less is there any comparative treatment of different legal systems; theories only are compared. The average lawyer who has never studied philosophy, or who has forgotten whatever philosophy he may have studied in college, will find this part of the volume practically unreadable.

For this reason the unphilosophic lawyer will do well to begin with chapter vi (pp. 178-209) which deals with the "Practical Foundations of the Deductive Idea of Law." After 10 pages of fairly concrete psychology he will find himself on the border land of law, in ethics. Seven pages further on (at p. 195) he will be cheered by reaching a paragraph on "Positive Law". In chapter vii the author examines the principle definitions of law, and in chapters viii and ix the relation of law to morals, economics, politics and sociology. In chapter x there is a slight and unsatisfactory sketch of the historical development of law—unsatisfactory because, like most continental European writers, Miraglia fails to appreciate how largely every legal system has been developed by the decision of single cases—and then, under the headings of "efficacy of statutes in space" and "in time," the author considers the principles that underlie the application of foreign law, in cases of so-called conflict of laws, and the theories concerning retroactive legislation. Public law is touched upon in connection with politics, but its treatment is quite inadequate.

Book II (pp. 319-773) deals with private law according to the customary continental European classification: persons, things, obli-

gations, family, succession. The examination of the rules of positive law on these subjects includes some legal history; the appreciation of the rules is based upon economic and social considerations. In his strictly legal philosophy, as in his social philosophy, Miraglia is on the whole individualistic: the basis of private rights is found in personal freedom, not in social expediency; social interests appear chiefly as justifying limitations upon private rights. His economic theory is fundamentally of the *laissez-faire* type; but even here his position is not extreme, for he insists that economics is not to be divorced from ethics (pp. 272-274).

In Miraglia's treatment of positive law there is practically no element of comparison except in the field of early custom. In this field many of his views are already antiquated. With early German law he shows little acquaintance; of English law he apparently has no knowledge. His descriptions of the development of the special branches of private law are based upon the experience of western continental Europe from the Roman Twelve Tables to the great modern codes. The categories of existing continental European law appear to him to be final. In the main they are doubtless more nearly final than those of the English law; but English legal theory and practice have worked out some valuable distinctions which the continental European lawyers have never drawn. For a single example, in the continental European law of to-day the subject of torts is still treated under the head of obligations (*i. e.*, debts) as it was treated by Gaius and other Roman writers. When we consider, however, that actions of tort protect all sorts of private rights, it seems clear that the English practice of treating torts as a distinct branch of the law is quite as justifiable as is the universal practice of treating criminal law as a distinct department. In a scientific arrangement, torts should be treated in what the Germans call the "general part" of private law.

The foregoing criticism of Miraglia's Legal Philosophy, much of which applies to nearly all continental European works on the subject, is not a criticism of the enterprise which the editors of the series are conducting. English legal science is, on the whole, upon a much lower plane of development than the legal science of continental Europe, and it is extremely desirable that European theories should be made accessible to English readers.

On the work of the translator, Mr. Ernest Bruncken has expressed in the latest issue of the *American Political Science Review* (Feb. 1913, at pp. 147-148) a very unfavorable judgment. Mr. Bruncken fully recognizes the difficulty of finding English equivalents for Italian philosophical and legal terms. He indeed exaggerates this difficulty: when, for example, he objects to using the English word "obligation" in the Roman sense, he sets up a standard of equivalency which would make the translation of any foreign legal work into English impossible. He gives, however, numerous instances in which the translator has evidently failed to grasp the meaning of the original word or phrase. To these instances the present reviewer could add many others. The impression produced by such lists of mistakes is, however, somewhat misleading. If the translator has frequently erred, he is not always wrong. On the whole, the translator of this book has done as well as could be expected from one who is not familiar with continental European law. Mr. Bruncken also criticises the proof reading, and with justice; but his statement that "there is hardly a sentence in

Latin, French or German without ridiculous errors" is an indefensible exaggeration. In the main, however, Mr. Bruncken's objections are well founded; and it is to be hoped that in the preparation of future volumes in this series greater care will be exercised, not only in reading the proof, but also in controlling the work of the translators.

Munroe Smith.

A MANUAL OF AMERICAN MINING LAW. By A. H. RICKETTS of the San Francisco Bar. San Francisco: SCIENTIFIC BOOK PUBLISHING COMPANY. 1912. pp. xiv, 486.

As stated in the preface by Charles Gregory Yale, son of the author of "Yale on Mining Claims and Water Rights" (1867), there has been no attempt in this handbook "toward elaboration or argument. The author gives what he considers the proper construction of the law and in each case cites the authorities. * * * Under each general heading are numbered and titled paragraphs exceedingly brief but expressive, and containing reference to the footnote showing the authority and its source".

The work is not aimed to nor would it fulfil the requirements of the student of the general subject of mining law. There is no discussion whatever of principles and in some instances it is not entirely clear by what line of reasoning the author arrives at his conclusions. To be of general use throughout the mining states, the work may be criticised as specializing too much on California conditions, since the special laws of that state on various subjects are often quoted in full, without parallel references to the laws of other states on analogous topics. For example, the chapter on "Taxation", except for its discussion of the Federal Corporation Income Tax, only covers the California requirements.

The treatment of the important subjects of extralateral rights and tunnel rights is exceedingly meagre and would hardly seem sufficient to guide an inquiry into the important complications that very frequently arise under these topics. On the other hand, the subject of oil bearing lands is rather fully treated and seems to cover the field quite thoroughly.

In conclusion we would say that as a book of rules to be carried by the prospector or miner in the field, the work should be of great value, but as a guide to the general subject of mining law from a scientific standpoint, there is little, if any, value to it.

Pages 1 to 285 contain the text; pages 286 to 410 contain an assortment of forms commonly used by mining men; pages 411 to 486 contain, respectively, an index of forms, a general index and table of cases cited. At the end of the volume is a brief addendum of recent cases having a bearing on paragraphs of the work.

H. Alexander Smith.